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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
Policies and Rules Implementing) CC Docket No. 93-22
the Telephone Disclosure and)
Dispute Resolution Act)

To: The Commission

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**COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys, hereby submits these Comments in response to the Further Notice of Proposed Rule Making ("Further Notice") adopted by the Federal Communications Commission ("FCC" or "Commission") on August 2, 1994.

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing

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committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. Over the course of the last year, several API member companies have been billed for unauthorized calls made by their employees to information service providers via 800 numbers. These instances of fraud were often difficult to detect due to the failure of the carrier to identify the calls as 800 calls in the carrier's monthly statement. API is concerned that the Commission's present pay-per-call rules are apparently insufficient to prevent such abuses. API is therefore encouraged by the Commission's decision to issue a Further Notice of Proposed Rule Making in this proceeding.

II. DISCUSSION

3. Preliminarily, API notes that existing rules do address many of the abuses experienced by API members and other customers. It is a combination of a lack of effective enforcement and arguable loopholes attributable to suspect ambiguities in the statutory and regulatory language that

have permitted such abuses to continue. API supports the rule changes proposed in the Further Notice. If adopted and enforced, the proposed rules should help curtail many of the current abuses in the pay-per-call industry.

4. API supports the Commission's proposed amendment to Section 64.1504(b) of its rules to prohibit the use of 800 numbers to connect callers to any information service that is not provided under a presubscription or comparable arrangement. Under current rules, carriers are merely prohibited from billing for such calls when transferred to a non-900 number. The proposed modification will ensure that a carrier's obligation to prevent the use of 800 numbers to connect callers to non-presubscribed information services is not limited to those calls transferred to 900 numbers.

5. API also endorses the proposed amendment to Section 64.1504(c) which would clarify that the rule's protection extends to subscribers whose telephone lines may be used to place calls to 800 number information services, and not just callers to those services. In this regard, API applauds the Commission's efforts, both in this rulemaking and its letter to the Association of College and University Telecommunications Administrators, to emphasize that a "caller cannot legally establish an arrangement that binds

another party -- the subscriber to the originating line -- to terms and conditions unknown to and unaccepted by that party."^{1/}

6. API strongly supports the Commission's proposal to require that "presubscription or comparable arrangements" be executed in writing. This requirement should help prevent information service providers from creating "instant presubscription" through the use of automatic number identification ("ANI"). A service billed to one API member is illustrative of this problem. In that instance, the caller was given the option of paying by Visa or MasterCard or obtaining an "instant credit calling card number" at no charge. After selecting the latter option, the caller was given a 14 digit number consisting of the ten digit phone number from which the call originated (obtained through ANI) plus a four digit PIN number. After providing the service with a date of birth, the caller was then instructed to hang up and redial the 800 number. The 14 digit number was then entered to obtain an adult entertainment service, with the service charges billed to the number from which the call obtaining the instant credit number was originally dialed.

^{1/} Letter from Gregory A. Weiss, Acting Chief, Enforcement Division, Common Carrier Bureau to Randal R. Collett, Executive Vice President, Association of College and University Telecommunications Administrators, 9 FCC Rcd 2819 (1994).

7. Section 64.1501(b)(2) of the Commission's rules states that no action taken by a consumer other than disclosure of a credit or charge card number, along with authorization to bill that number, can be construed as creating a presubscription or comparable arrangement. Although this provision would appear to prohibit the subscription and billing arrangement discussed above, an argument could be made that the "instant credit calling card number" created through the use of ANI constitutes a "credit or charge card number" within Section 64.1501's definition of "presubscription or comparable arrangement." The requirement of a written agreement will close this loophole.^{2/} The proposal to prohibit common carriers from billing subscribers for presubscribed information services without evidence of the written agreement and to require carriers to address bills assessing presubscribed information service charges only to the individual who entered into the presubscription agreement will provide telephone customers with further protection.

^{2/} The written agreement requirement, as proposed, will not prevent legitimate use of pay-per-call services. The FNPRM proposes a limited exception to this requirement for charges authorized to a credit or charge card "generally accepted for the purchase of consumer goods, entertainment, travel, and lodging."

8. API agrees with the Commission's proposal to formalize its requirement that presubscription agreements be made by a legally competent individual. Although the Commission has stated this requirement previously,^{3/} it has not previously been incorporated into the text of the rule. API suggests that the rule require that the individual executing the presubscription agreement attest to his or her legal competence, and provide documentation of the individual's age.

9. API also supports the Commission's proposal to require carriers performing billing services for information service providers, without exception, to make certain disclosures in any bills containing charges for presubscribed information services and display detailed information pertaining to each such charge in a separate section of the bill. Specifically, the carrier would be required to display for each information service charge:

- (1) the type of service and the provider's name and business telephone number;
- (2) the telephone number actually called;
- (3) the amount of the charge;
- (4) the date and time of the call, and
- (5) for calls billed on a time-sensitive basis, the duration of the call.

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^{3/} See Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, 8 FCC Rcd 6885, 6888, n. 26 (1993).

Section 64.1510(b) requires that such information be displayed only "to the extent possible." The proposed rule change will eliminate any ambiguity regarding the disclosure of such billing information.

10. Section 64.1510, if amended as proposed, will ensure that any unauthorized calls made to pay-per-call services can be easily detected. Some API member companies have received bills where the charges for such calls are hidden among a lengthy list of long distance charges. Not only did the billing entity fail to identify the information service nature of the calls, it listed the calls as placed to a ten digit POTS number rather than the 800 number actually dialed. Only the most perceptive customers can recognize unauthorized charges when depicted in this manner.

11. As discussed above, many of the abuses endured by API members and others at the hands of unscrupulous information service providers are unlawful under current law. The same is true for carriers willing to abet such activity through questionable billing practices. While the proposed rule changes will reinforce the foundation of pay-per-call regulatory structure, they will only be effective if the Commission aggressively enforces the regulations. As evidenced by the thousands of complaints received by the

Commission in the first half of 1994 alone, the extent of abuse in the pay-per-call industry remains excessive. The Commission should and must use its enforcement authority against the entities who violate its pay-per-call rules. Absent such enforcement, the proposed rule amendments are likely to be no more than window dressing.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully requests that the Federal Communications Commission take action in a manner consistent with the views expressed herein.

Respectfully submitted,

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